IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7962 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GANCHI MOHMADBHAI KADUJI - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR VC DESAI for Petitioner(s) : 1,
MR DASHRATH CHAUHAN AGP for Respondent(s) : 1,
MR YN RAVANI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 16/11/2006

ORAL JUDGMENT

1. Ganchi MehmadbhaiKaduji, petitioner herein has filed this petition under Article 227 of the Constitution of India with a prayer to issue a

writ of certiorari or any other appropriate writ or order or direction quashing and setting aside order at Annexure B passed below Exh.102 in Regular Civil Suit No.201 of 1992 by the learned Civil Judge (S.D.) Mehsana, by which the learned Judge was pleased to reject the application of the petitioner,-original plaintiff for amendment under Order 6 Rule 17 of the Code of Civil Procedure.

2. This matter was listed for final hearing before this Court. Shri V.C.Desai, learned advocate appearing for the petitioner has submitted that it is true that this petition is of the year 2004 but it is arising out of suit filed in the year 1992 and in that case the amendment application has been filed which has been rejected in the year 2002 and, therefore, he requested that matter may be taken up for final hearing, that is how, the matter is taken up for final hearing at this stage.

3. Shri Yogesh Ravani, learned Senior Counsel

appearing for the respondent has also requested for final disposal of the matter, and, therefore, with consent of the learned advocates appearing for the respective parties, matter is taken up for final hearing.

4. Shri V.C.Desai, learned advocate appearing for the petitioner submitted that there is a property bearing Tika No.814 and Survey No.2 situated at Kadi (hereinafter referred to as 'the suit property'). He has stated that originally the father of plaintiff was owner of the said property. However, after the sad demise of the father, the said property was mutated in the name of Bai Amna, mother of the petitioner.

5. It is the case of the petitioner that his mother expired on 01.1.1987 and since one year prior to her death she was of unsound mind and after her death petitioner came to know that respondent no.2, who is his cousin has created a bogus oral gift dated 10.08.1987 and panchnama and other documents during the life time of his mother and

on the basis of same got mutated his name on 18.09.1987 in the record of City Survey Superintendent, Kadi.

6. Being aggrieved by and dissatisfied with the said action i.e. in respect of mutation entry the petitioner filed RTS Appeal No.32 of 1987 before the Competent Authority, whereby the Competent Authority was pleased to allow the appeal and also pleased to quash and set aside the mutation entry of the respondent made on 18.09.1987.

7. Being aggrieved by and dissatisfied with the said decision of the competent authority, the respondent no.2 filed RTS Revision No.14 of 1989 before Collector Mahesana. The Collector Mahesana was pleased to allow said Revision Application No.14 of 1989 and thereafter pleased to quash and set aside the order of the Competent Authority in RTS Appeal No.32 of 1987.

8. Being aggrieved by the said order of the Collector, Mahesana the petitioner herein has

filed RTS Revision No.12 of 1990 before the Special Secretary to Revenue Department. The Special Secretary, Revenue Department by his judgment and order dated 20.05.1991/17.09.1991 pleased to dismiss the same.

9. Thereafter, petitioner addressed a statutory notice dated 10th April, 1992 to respondent no.1 i.e. Collector Office, Mahesana. Thereafter, the petitioner filed a Regular Civil Suit No.201 of 1992 in the Court of learned Civil Judge (S.D.) Mahesana. In the said suit, the plaintiff has stated that as regards the suit property being bearing Tika No.814 and Survey No.2 situated at Kadi, was in the name of his father originally. There was a pakka building on the said land and there were also certain shops on the said land. He has also stated in the plaint that the said suit property was belonging to his father and after sad demise of his father the property was being run in the name of his mother. After death of his mother on 01.11.1987, on 17th February 1987, the plaintiff came to know that defendant

no.2 (respondent no.2 herein) who happens to be his cousin has got mutated the property of his(plaintiff's) mother in his (defendant no.2) name (on the ground that his mother has given the property) on the basis of oral gift deed. According to him, the property has been mutated on 18th September, 1987,but, before that City Survey Officer has not done any procedure while mutating the name of defendant. Thereafter, all revenue proceedings have been initiated which I have referred to earlier.

10. In the suit, plaintiff has challenged all revenue entries before the Revenue Authority in this regard. He has also stated that all actions are contrary to Muslim Law. He contended that as his mother was not well, even otherwise, she had no authority to gift the suit property so he has filed this suit for challenging the order of Special Secretary, Revenue Department, dated 17th September, 1991. The suit was filed somewhere on 06th October, 1992.

11.It is true that thereafter suit proceeded further. The learned advocate for the petitioner, states that during the pendency of the proceedings the plaintiff filed an application under Order 6 Rule 17 somewhere on 19th September, 2000 for amendment of the plaint. In the amendment application, the applicant prayed to add para Para:7/1, (to the effect that the suit property is ancestral one and petitioner has got share in it and petitioner is entitled to get the same). Para:12/1 being additional relief clauses (to the effect that declare that petitioner has got 1/2 share in suit property and a decree for partition and separate possession was asked for) and also in para-9 requisite amendment was sought for, for adding the aspect of valuation of claim and court fee stamp. The said application was filed at Exh.102, which was resisted by the defendant in this behalf.

11.1. The learned judge by his order dated 17th October, 2000, was pleased to reject the said application on the ground that the same is contrary to Order 2 Rule 2 of the Code of Civil

Procedure. The learned Judge further held that if the proposed amendment is granted (save the limitation point) then it does work injustice to the other side. The present application is not maintainable or legal and factual aspect and therefore the same was rejected by the learned judge.

12. Being aggrieved by and dissatisfied with the aforesaid order, the petitioner originally filed Civil Revision Application No.1103 of 2000 against the said order and the same was admitted. However, in view of the amendment in Section 115 of Code of Civil Procedure, this Court permitted to convert the said revision in petition under Article 227 of the Constitution of India. Hence, the petitioner filed present petition in the month of July, 2004.

13. This Court passed an order on 1.7.2004 for conversion of Revision into Special Civil Application.

14. In view of the above facts set out, the matter is taken up for final hearing today in this behalf.

15. I have heard Shri V.C.Desai, learned advocate appearing for the petitioner. It may be noted that on behalf of the respondent, I heard Shri Yogesh Ravani, who has resisted the present Special Civil Application in this behalf.

16. Shri V.C.Desai, learned advocate appearing for the petitioner has relied upon Order VI Rule 17 of Code of Civil Procedure which reads as under:-

> **" ORDER VI RULE 17:- Amendment of pleadings:-** The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."
>
> Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion in spite of due diligence, the party could not have raised the matter before the commencement of trial.

17. He has submitted that approach of the learned Judge is contrary to and inconsistent with settled principles of law. The learned counsel for the petitioner, in support of the same, has relied upon the decision of the Apex Court reported in **AIR 2001 SCC 699** in the case of **Ragu Thilak D. John Vs. Rayappan and ors.,** wherein the Apex Court has held on Para:5 and 6 as under:-

17.1 "Para:5:- After referring to the judgments in Chara Das Vs. Amir Khan, AIR 1921 PC 50 L.J.Leach & Co. Ltd. V.Jardine Skinner & Company, 1957 SCR 438: (AIR 1957 SC 357), Smt.Ganga Bai Vs.Vijay Kumar, (1974) 2 SCC 393: (AIR 1974 SC 1126), M/s.Ganesh Trading Co.V.Moji Ram, (1978) 2 SCC91: (AIR 1978 SC84) and various other authorities, this Court in B.K.N.Pillai Vs.P.Pillai, (1999) 10 JT (SC) 61: (2000 AIR SCW 43:AIR 2000 SC 614) held: (Para 3);

" The purpose and object of Order 6, Rule 17, C.P.C. is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is

wideand can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the Courts while deciding such prayers should not adopt hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.

17.2 Para:6 If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averments made in paras 8(a) to 8(f) of the plaint which were sought to be

incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed for."

18. He has also relied upon another judgment of the Apex Court reported in **AIR 2006 SC 1647** in the case of **Rajesh Kumar Aggarwal and Ors. Vs. K.K.Modi and Ors.** more particularly Para:16, 17, 18, 19, 20 and 29, which are as under:-

18.1 " Para: 16:- The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

18.2 Para: 17:- Order VI, Rule 17 consist two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow amendments which are necessary for the purpose of determining the real question in controversy between the parties.

18.3 Para: 18:- In our view, since the cause

of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

18.4 Para: 19:- As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

18.5 Para: 20:- While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.

18.6 Para: 29:- Since the Court has entered into a discussion into the correctness or falsity of the case in the amendment, we have no other option but to interfere with the order passed by the High Court. Since it is settled law that the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing prayer for amendment, the order passed by the High Court is not sustainable in law as observed by this Court in Sampath Kumar Vs. Ayyakannu and Another, (2002) 7 SCC 559. **(See Paras:16 to 20 at Page 1651 and 1652, Page 1655** in case of **Rajesh Kumar Aggarwal (SUPRA))**

19. He has also relied upon decision of the Apex Court reported in **2006 (6) SCC 498** in the case of **Baldev Singh & Ors. Vs. Manohar Singh and Anr.** wherein the Apex Court has held in paras:8 and 9

that:

19.1 " **Para:-8** It is well settled by various decisions of this Court as well as the High Courts in India that courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In this connection, reference can be made to a decision of the Privy Council in *Ma Shwe Mya V. Maung Mo Hnaung* in which the Privy Council observed:-

> " All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment *must be enjoyed and should always be liberally exercised,* but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit."

19.2 "**Para:-9-** Keeping this principle in mind, let us now consider the provisions relating to amendment of pleadings. Order 6 Rule 17 of the Code of Civil Procedure deal with amendment of pleadings which provides that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for

the purpose of determining the real questions in controversy between the parties. From a bare perusal of this provision, it is pellucid that Order 6 Rule 17 of the Code of Civil Procedure consists of two parts. The first part is that the court may at any stage of the proceedings allow either party to amend his pleadings and the second part is that such amendment shall be made for the purpose of determining the real controversies raised between the parties. Therefore, in view of the provisions made under Order 6 Rule 17 CPC it cannot be doubted that wide power and unfettered discretion has been conferred on the court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the court just and proper. While dealing with the prayer for amendment, it would also be necessary to keep in mind that the court shall allow amendment of pleadings if it finds that delay in disposal of suit can be avoided and that the suit can be disposed of expeditiously."

20. The learned advocate appearing for the petitioner has submitted that while rejecting the amendment application, the learned Trial Judge has taken into consideration Order II Rule 2 of the Code of Civil Procedure, 1908 where a plaintiff omits and relinquishes, and, therefore,

present application for amendment cannot determine or pray for proposed amendment. The learned advocate for the petitioner has submitted that the aforesaid conclusion of learned Trial Judge is contrary to and in consistent with the decision of this Court in the case of CHIMANLAL AMBALAL VS. SHAH HASMUKHLAL reported in **AIR 1976 GUJARAT 60, wherein in Para:10 at page 62, it is held that:-**

20.1 " Para:10:- In Jagat Singh v. Sangat Singh AIR 1940 PC 70 the Privy Coucil has at page 73 made the following instructive observations:-

" The High Court would seem to have assumed that S.19 (of the Civil P.C.1882) was not merely permissive: also that the claim to recover possession of the Lvallpur lands and the claim to a declaration as regards the other lands were claims in respect of the same cause of action: cf.(1914) 41 Ind App 142 (PC). Their Lordships think that both assumptions are highly debatable. But, in any case, the claim of the present appellants as reversioners of Ishar Singh would not have been barred so far as regards the question whether Ishar Singh's will gave to his widow an absolute interest or an interest for her life. Moreover, so long as the suit of 1906 was undisposed of, it was always possible that the Court if it thought that there was anything in

the point as to Order 2 Rule 2 would give leave to the plaintiff to amend by including a claim to recover possession of the ornaments and Lvallpur lands”

It is thus evident that such an amendment can be allowed and there cannot be any bar of the provisions of Order 2 Rule 2 (2) of the Code. The learned trial Judge has in my opinion clearly committed an error in holding that there would be such a bar and consequently a valuable right has accrued in favour of the opponents defendants and so such an amendment application should not be allowed.”

20.2 After relying upon the same, the learned advocate for the petitioner has submitted that the reasoning of the learned Trial Judge is contrary to and inconsistent with the aforesaid judgment.

21. The learned counsel has further submitted that in this case parties are muslims and, therefore there is a special relationship and Court has to consider the principles of Momedian Law wherein the Court has considered the principles of limitation as well as regarding adverse possession. He has also relied upon the judgment of the Apex Court where Muslims are the parties

reported in **(2004) 13 SCC 385** in case of **Mohammadbhai Kasambhai Sheikh and Ors. v. Abdulla Kasambhai Sheikh,** wherein in Para:4 the Apex Court has held as under:-

21.1 "PARA:-4. In our view, the conclusion of the High Court and the first appellate court is correct. However, the reasoning given in support of such conclusion is fallacious. The respondent had come with the clear case that he had been ousted in 1968. If the reasoning of the first appellate court and the High Court were to be accepted then as the suit had been filed only in 1988, it was barred by limitation. But as has been held in *Mahomedally Tyebally v. Safiabai* the heirs of Mohammedans (which the parties before us are) succeed to the estate in specific shares as tenants-in-common and a suit by an heir for his/her share was governed, as regards immovable property, by Article 144 of the Limitation Act, 1908. Article 144 of the Limitation Act, 1908 has been materially re-enacted as Article 65 of the Limitation Act, 1963 and provides that the suit for possession of immovable property or any interest therein based on title must be filed within a period of 12 years from the date when the possession of the defendant becomes adverse to the plaintiff. Therefore, unless the defendant raises the defence of adverse possession to a claim for a share by an heir to

ancestral property, he cannot also raise an issue relating to the limitation of the plaintiff's claim.”

21.2. In view of the same, after relying upon the same, the learned counsel has submitted that as in that case the learned counsel for the defendant ought not to raise any issue of adverse possession in the written statement in that view of the matter the proof of limitation was not available to the defendant in this behalf. The aforesaid submission also based upon the aforesaid judgment of **Mohammadbhai Kasambhai Sheikh (Supra),** which was also of the similar facts relating to the muslim properties, and, therefore, I also accept the contention of the plaintiff in this behalf.

22. On behalf of the respondent, Shri Y.N.Ravani appeared and submitted that the amendment as sought by the plaintiff changes the entire nature of suit since initially he prayed against the orders of State Government as well as Revenue Authorities challenging the mutation entry by

adding name is without provisions of law and therefore changing the nature ought not to be permitted to be done. The learned counsel further submitted that the prayers as prayed for in amendment application are time barred and therefore, the same cannot be granted by way of amendment. It would amount to time barred under the Code of Civil Procedure. It was further stated that the application after argument by the plaintiff, is at belated stage.

23. In support of the same, the learned counsel has further relied upon **AIR 1995 SC 1768** in the case of **K.Raheja Constructions Ltd. V. Alliance Ministries and Ors.** wherein in Para:4 it is held that "... Having allowed the period of seven years elapsed from the date of filing of the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963, any amendment on the grounds set out, would defeat the valuable right of limitation accrued to the respondent."

Shri Ravani learned advocate for the

respondent has also relied upon decision of the Apex Court reported in **AIR 1996 SC 2358** in case of **Radhika Devi Vs.Bajrangi Singh and ors.**

24. The learned counsel appearing for the respondent has also placed reliance on the judgment of this Court reported in **1984 (2) GLR 1140** in the case of **The Arvind Mills Ltd. and Anr. Vs. State of Gujarat and ors.** particularly para 5 on page 1146. He has further stated that the judgments relied upon by the petitioner have no relevance at all in the present case and the Court may not rely upon the same. He has further submitted that this petition under Article 227 of the Constitution of India and the Court may not entertain the same and therefore, the same deserves rejection.

25. I have given my anxious consideration in this behalf. I have considered the judgment of the Apex Court and the principles of Order VI Rule 17 of the Code of Civil Procedure. In this behalf I have also referred to the following principles of

Code of Civil Procedure, 1908.

25.1 " The object of the Rule is that the courts should try the merits of the cases that come before them and should consequently allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. *(P.H.Patil V.K.S.Patil, AIR 1957 SC 363).*

25.2 Ultimately, courts exist for doing justice between the parties and not for punishing them, and they are empowered to grant amendments of pleadings in the larger interest of doing full and complete justice to the parties. *(Ram Manohar Lal V.National Building Material Supply, (1969) 1 SCC 869.* Provisions for the amendment of pleadings are intended for promoting the ends of justice and not for defeating them.(*Ganesh Trading Co.Vs.Moji Ram, (1978) 2 SCC 91."*

25.3 If the amendment is necessary to decide the "real controversy" between the parties, the amendment should be allowed even though the court may think that the party seeking the amendment

will not be able to prove the amended plea. This is the basic test which governs the courts' unchartered powers of amendment of pleadings. *No amendment should be allowed when it does not satisfy this cardinal test. (Per P.B.Mukharji, J. in Narsing Prosad Vs. Steel Products Ltd., AIR 1953 Cal 15(17).”*

25.4 Power to allow amendment should be liberally exercised. The liberal principles which guide the exercise of discretion in allowing amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be readily granted.

25.5. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. *Dondapati Narayana Reddy V. Duggireddy (2001) 8 SCC 115.*

PRINCIPLES:

25.6 Provisions relating to amendment of pleadings must be liberally construed with a view to promote the ends of justice and not to defeat

them. The purpose and object of the rules of pleadings is to decide the real controversy between the parties and not to punish them for their mistakes, negligence or shortcomings. The exercise of discretionary power must be governed by judicial considerations and the wider the discretion, the greater the care and circumspection. The following principles should be borne in mind in dealing with applications for amendment of pleadings:

(i) All amendments should be allowed which are necessary for determination of the real controversies in the suit;

(ii) The proposed amendment should not alter and be a substitute for the cause of action on the basis of which the original lis was raised;

(iii) Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts would not be allowed to be incorporated by means of amendment;

(iv) to (vi) xxxxxx

(vii) No party should suffer on account of the technicalities of law and the amendment should be allowed to minimize the litigation between the parties;

(viii) xxxxxx

(ix) Error or mistake, which if not fraudulent, should not be made a ground for rejecting the application for amendments of pleadings.

[**Re: Code of Civil Procedures, Vol.3, pages 473-474 by Hon'ble Mr. Justice C.K.THAKKER, (now Judge of the Hon'ble Supreme Court of India)].**

26. I have considered the facts of the case in this behalf. In this case, it was stated that the father of the plaintiff was the owner of the suit property and thereafter the mother was also the owner of the property and thereafter the cousin of the plaintiff has tried to get the property mutated in his name on the ground that the property was gifted to him by the mother of the plaintiff on 10.08.1987. The said mutation entry

was challenged and subsequent order passed thereon was also challenged. Therefore, basic factual aspects of the plaint is controversy has already been set out in this regard. He has further stated that as per Muslim Law also the mother has limited right to gift and against that right she has no right to give property in this regard. The plaintiff has challenged the proceedings by way of amendment and in the plaint revenue proceedings, are also challenged. I have set out the basic facts in the plaint, amendment application and reply of the other side as well as order of the learned Trial Judge. I have also considered the Order VI Rule 17 of the Code of Civil Procedure and judgment of the Apex Court in the case of **Ragu Thilak D John (Supra), Rajesh Kumar Aggarwal and Ors. (Supra), Baldev Singh & Ors. (Supra),** in extenso. I have considered the judgment of the Gujarat High Court in the case of reported **AIR 76 GUJARAT 60** and in case of **Mohammadbhai Kasambhai Sheikh and Ors. (Supra),** in this behalf and in view of the authorities cited by the learned counsel for the petitioner, I have also set out certain principles which were

also considered by the Hon'ble the Supreme Court from the various judgment of the Apex Court, I have also considered the commensurate Code of Civil Procedure (Re: Hon'ble Respected Mr. Justice Shri C K Thakker (now Hon'ble Judge of Supreme Court of India), judgments of the Supreme Court. In view of all the above, it was stated that father of the plaintiff was owner of the suit property and thereafter the mother of the plaintiff was also owner of the suit property. Thereafter, the mother of the petitioner expired and since one year prior to her death she was unsound and after her death the respondent no.2 has created bogus gift deed dated 10th August, 1987 and on the basis of the same got mutated properties in his name on 18th September, 1987 and thereafter various revenue proceedings were initiated. Thereafter statutory notice was given on 10th April, 1992 and suit has been filed challenging the revenue proceedings in this behalf. It may be noted that thereafter under Order VI Rule 17 of Code of Civil Procedure, 1908, application for amendment has been filed raising contention that the suit property is

ancestral and petitioner got share in it and thereby entitled to get the same. It has been further stated that petitioner got ½ share and separate possession was asked for. Therefore basic factual aspect of the plaint is based of the amendment and the nature of the suit is not changed in this behalf.

27. I may also state that Order VI Rule 17 has been recently amended and Rules 17 and 18 get omitted by Act 46 of 1999, Section 16 again substituted by Act 22 of 2002, Section 7 (w.e.f. 1-7-2002) by that legislature.

28. It may be further noted that in this case, the suit is filed in the year 1992 and the amendment application was filed on 19th September 2000 (much prior to introduction of an amendment in Order VI Rule 17 in this behalf). Therefore, the present proceedings have been disposed of without being considered the proviso to Order VI Rule 17 in this behalf because at the relevant time when the amendment application was filed, proviso was not

on statute book.

29. In view of the judgment of the Apex Court in case of Raghutilak (Supra) and other judgments, the present petition requires to be allowed in this behalf.

30. In view of the above settled principles and in view of the judgment of the Apex Court referred above and the principles quoted in the Code of Civil Procedures as referred above, I am of the opinion that the amendment as prayed for by the plaintiff is required to be allowed. The order of the learned Trial Judge refusing the amendment is not legal and hence the same is quashed and set aside accordingly.

31. In view of the same, this petition is hereby allowed. The order of the learned Trial Judge is quashed and set aside. As per Order VI Rule 18, the learned Judge may give opportunity to amend the plaint within 15 days after receipt of writ of order of this Court. The plaintiff will allow

to amend and thereafter the learned Trial Judge is requested to hear and decide the same as expeditiously as possible. It would be open for the learned Trial Judge to allow defendant to file additional written statement in this behalf.

(K.M.MEHTA, J.)

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